

No. 05-693 NOV 25 2005

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IN THE

**Supreme Court of the United States**

STEPHEN V. CRAIG AND UN SUN H. CRAIG, PETITIONERS

*v.*

DIANE COX BASHEER COMMUNITIES, INC.; EDGEMOORE  
HOMES, LLC;  
BASHEER/EDGEMOORE-SOUTHAMPTON, LLC;  
BASHEER/EDGEMOORE-WESTHAMPTON, LLC;  
AND BASHEER & EDGEMOORE, A VIRGINIA GENERAL  
PARTNERSHIP,

*PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF VIRGINIA*

**PETITION FOR A WRIT OF CERTIORARI**

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**Question Presented**

Did the Virginia state courts deny the petitioners due process of law when they unexpectedly and without fair warning repudiated a state statute which recognizes the liability of a partnership created by estoppel thereby denying the petitioners a hearing on their claims that the respondents, acting collectively as a purported partnership under Virginia law, breached their contract to build them a home, violated the Virginia Consumer Protection Act and committed fraud in doing so?

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### **Citations of Opinions and Orders.**

The unpublished opinion of the Supreme Court of Virginia, decided and filed June 28, 2005, in *Stephen V. Craig et al. v. Basheer & Edgemoore et al.*, Docket No. 050605, affirming the Virginia Circuit Court's orders sustaining the Respondents' demurrers to the Petitioners' complaint, is set forth in the Appendix hereto(App. 1).

The unpublished Order of the Circuit Court of Fairfax County, Virginia, in *Stephen V. Craig et al. v. Diane Cox Basheer Communities, Inc. et al.*, Law No. 220180, dated December 28, 2004, dismissing Count One of the Petitioners' complaint, is set forth in the Appendix hereto(App. 2).

The unpublished Order the Circuit Court of Fairfax County, Virginia, in *Stephen V. Craig et al. v. Diane Cox Basheer Communities, Inc. et al.*, Law No. 220180, dated December 9, 2004, sustaining demurrers to the Petitioners' complaint, is set forth in the Appendix hereto(App. 3).

The Petitioners' first amended motion for judgment (or amended complaint) in *Stephen V. Craig et al. v. Diane Cox Basheer Communities, Inc. et al.*, Law No. 220180 is set forth in the Appendix hereto(App. 4-31).

Excerpts of the Petitioners' Home Inspection Report, dated December 10, 2004, is set forth in the Appendix hereto(App. 32- 48).

### **Basis for Jurisdiction in this Court.**

The decision of the Supreme Court of Virginia, the State court of last resort having jurisdiction to review the decisions of all inferior courts, affirming the Virginia Circuit Court's orders sustaining the Respondents'



demurrers the Petitioners' complaint and dismissing a remaining count, was decided and filed June 28, 2005(App. 1).

On September 23, 2005, this Court, Thomas, J., in *Stephen V. Craig et al. v. Basheer & Edgemoore et al.*, Docket No. 05A267, extended the time for the filing of the Petitioners' petition for writ of certiorari until November 25, 2005.

This petition for writ of certiorari is filed within the extension of time allowed by this Court.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1257(a).

### **Constitutional, Statutory and Rule Provisions Implicated by This Petition.**

United States Constitution, Amendment XIV, Section 1:  
Virginia Code Section 50-73.88(A):  
Virginia Code Section 50-73.97(A), (B), (D)(2) & (E):  
Virginia Code Section 50-73.98. Liability of a purported partner:

(See Appendix)

### **Statement of the Case.**

The respondent Basheer & Edgemoore ("B & E") is a Virginia general partnership which in its advertising, marketing and operation, holds itself out to the general public as an entity which specializes in the construction, sales and financing of luxury residential homes in suburban Virginia.

B & E consists of at least four other partners in this enterprise: the respondent Diane Cox Basheer Communities, Inc., a Virginia corporation with a fictitious



trade name of Diane Cox Basheer Communities ("Diane Cox"); the respondent Edgemoore Homes, LLC, a Virginia limited liability company with a fictitious trade name of Edgemoore Homes ("Edgemoore Homes"); the respondent Basheer/Edgemoore-Southampton, LLC, a Virginia limited liability company operating under the trade name Basheer & Edgemoore ("B & E"); and the respondent Basheer/Edgemoore-Westhampton, LLC, a Virginia limited liability company operating under the trade name Basheer & Edgemoore ("B & E").

In the 1999 and spring of 2000, the petitioners Stephen V. Craig and Un Sun H. Craig ("the petitioners") were shopping for a new home in suburban Virginia. In its advertising brochures and general marketing of a new development in Springfield, Virginia, the respondent B & E held itself out to be a partnership of the respondents Diane Cox and Edgemoore Homes doing business under the name of B & E. The petitioners responded to this marketing by B & E. Eventually, on May 20, 2000, they entered into an agreement with B & E for the purchase of a new home to be constructed by B & E at 7545 Laurel Creek Lane in Springfield. The parties to the purchase and sale agreement executed were the petitioners as the buyers and the respondent Basheer/Edgemoore-Southampton, LLC, a member of the B & E general partnership, as the seller; Diane Cox Basheer and the petitioners signed the contract.

Prior to signing the agreement, the petitioners communicated with B & E about the respondents Diane Cox and Edgemoore Homes and the details of the home they were buying. The petitioners inspected at least two models that the respondents built and examined the neighborhood of these models. They told B & E's agent about their requirements as to price and the topography of the lot, i.e., they wanted to pay no more than \$495,000

and desired privacy and a large, flat terrain for their front, side, and back yards. B & E's agent steered them to Lot No. 36 on Laurel Creek Lane and promised that the existing slopes on the lot would be leveled and that trees would be planted to insure privacy. The petitioners paid an additional \$5,000 for trees and privacy. As far as price was concerned, B & E's agent did not tell the petitioners that there would be any additional costs associated with these "upgrades."

B & E's agent also denied the petitioners their choice of the model home they had selected citing B & E's prohibition against the proximity of the similar models in the same neighborhood next to each other. Yet they later discovered that three of these same models were located their neighborhood next to each other. They also wanted a side sunroom and garage on either Lots Nos. 8 or 9; and B & E represented that side sunrooms could not be built on those lots, suggesting instead that Lot No. 36 would be preferable. Yet houses were later built for other purchasers on Lots Nos. 8 and 9 with these very side sunrooms and without slopes/hills.

B & E also promised the petitioners that no pine trees would be planted adjacent to their lot and that the common area behind Lot No. 36 would be landscaped by planting shrubs and bushes instead of just grass. It further promised them that their home would be constructed with the same characteristics of B & E's model home they had inspected; that it would contain the same materials, the same standard of workmanship and the same quality and style as B & E's model home.

In reliance upon all of these representations by B & E's agents and employees, the petitioners entered into the purchase and sale agreement for their new home on Lot No. 36 at 7545 Laurel Creek Lane in Springfield, for a total sum of \$610,833.00, an amount which was at least

\$115,833.00 more than they would have paid if they had purchased the home which they had originally wanted. Incident to their purchase, the petitioners were given B & E's Home Warranty which was to protect their home against defects in workmanship, material and design for a period of one year after the closing. The Warranty also promised the petitioners a re-inspection 90 days after the closing and an end-of-year "walkthrough" inspection.

When the agreement was executed on May 20, 2000, Basheer/Edgemoore-Southampton, LLC, B & E's partner, was not licensed in Virginia as a home contractor; and it was not so licensed until February 9, 2001, when construction was well underway. Prior to its licensing as a home contractor, Basheer/Edgemoore-Southampton, LLC relied upon the contractor's license of its partner, the respondent Basheer/Edgemoore-Westhampton, LLC, another partner of B & E, in order to obtain the building permits and begin work on the petitioners' house consistent with the agreement. Both of these partners share employees and officers with one another while operating under the name of B & E. The closing on this purchase and sale agreement was to take place within one year of May 20, 2000, when construction of the home was to be completed by B & E.

After the purchase of their house, the petitioners were now told by B & E that their home, unlike the model upon which they relied in making their purchase, would not contain a so-called "bonus" room. In addition, even though other homeowners were allowed to do so, the petitioners were told by B & E that they could not visit their lot prior to the closing and that they would trespassing if they did so. Even from afar, however, they could see that the back of Lot No. 36 had not been landscaped as promised; it remained sloped and hilly with grass and provided no privacy.

When the petitioners communicated these concerns to B & E's agent during the course of the construction, B & E assured them that once construction was completed there would be no significant slope in their back yard and that additional trees would be planted there for their privacy. When these obvious problems with the lot's slope remained and unexpected additional upgrade costs arose, the petitioners in July of 2000 asked B & E to release them from the agreement, telling B & E that they would rather lose their deposit monies than go through with a purchase with which they would not be happy. B & E refused to discuss terminating the agreement, telling the petitioners that "no one backs out," even though the petitioners subsequently discovered that other purchasers were given an option to build their homes on other lots in similar circumstances. There were also pine trees planted next to the lot, contrary to B & E's assurances that no such trees would be planted.

As the closing in May of 2001 approached and the slope and above-ground utility poles remained unaddressed, B & E's building operations manager in March or April of 2001 told the petitioners that B & E would make the right side of the yard "at least walkable" and that the right side of the rear yard would be the flattest part. B & E further promised the petitioners that its crew would work on the slope issues in the back yard and that sod would not be laid until the petitioners agreed with the topography. None of these things was accomplished before or after the closing on May 8, 2001, as B & E had promised the petitioners.

After the closing, the petitioners moved into the home and immediately discovered that the home B & E sold to them was of a grossly inferior quality compared to the model and samples shown them which prompted their purchase in the first place. In June of 2001, B & E's